

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER
AFFAIRS STATE OF CALIFORNIA**

**In the Matter of the Petition for Early Termination of
Probation filed by:**

JOSEPH ANTHONY DESANTO, M.D.,

Petitioner Case No. 800-2020-071350

OAH No. 2021090729

DECISION AFTER NON-ADOPTION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video conference on November 9, 2021.

Courtney E. Pilchman, Attorney at Law, represented Joseph Anthony DeSanto, M.D. (Petitioner).

Robert W. Lincoln, Deputy Attorney General, appeared on behalf of the Attorney General's Office pursuant to Government Code section 11522.

The matter was submitted for decision on November 9, 2021. The proposed decision was issued on December 6, 2021.

On February 17, 2022, Panel A of the Board issued an Order of Non-Adoption of Proposed Decision. The parties waived written and oral argument. Panel A, having read and considered the entire record, including the transcript and the exhibits, hereby enters this Decision After Non-Adoption.

SUMMARY

Petitioner signed and filed a Petition for Penalty Relief for the Reduction of Penalty to terminate probation which is scheduled to end on July 10, 2022. Petitioner has not met his burden to show that early termination of probation is warranted. His petition is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 10, 1995, the Medical Board of California (Board) issued Physician and Surgeon's Certificate (certificate)¹ No. G81151 to Petitioner. On December 29, 2014, Kimberly Kirchmeyer, who was then the Board's executive director, signed the first amended accusation, Case No. 10-2012-223005, against Petitioner. Petitioner was charged with multiple violations of the Medical Practice Act based on the allegations he diverted opioid medications he prescribed to two of his patients for his own use in July and August 2011, and that he diverted around December 2013 another opioid he obtained from a pharmaceutical representative also for his own use.

2. Effective July 10, 2015, the Board adopted the Stipulated Settlement and Disciplinary Order which Petitioner had signed March 11, 2015. Petitioner admitted the truth and accuracy of each and every charge in the first amended accusation. Petitioner's certificate was placed on probation for seven years with terms and conditions. These terms and conditions included a 60-day suspension, a partial prohibition on his ability to prescribe controlled substances, requirements that he abstain from the use of controlled substances and alcohol and submit to biological fluid testing. He was also required to have a practice monitor, undergo psychiatric and

¹ In this decision the term certificate is used interchangeably with the term "license."

medical evaluations, participate in psychotherapy, and comply with other terms and conditions. Since July 21, 2015, Petitioner has been treating with Robert Pate, Psy.D., a clinical psychologist. Paul Strodtbeck, M.D, has served as Petitioner's practice monitor.

3. Petitioner failed to comply with the terms of his probation as follows: He failed to check in with FSS Solutions, the Board's vendor for monitoring biological fluid testing, on August 20, 2018, and October 29, 2018. Petitioner also submitted quarterly declarations four days late once for the last quarter in 2018, and three times in 2020 when he submitted the declarations from one to four days late. His probation is scheduled to end in July 2022.

Petition for Penalty Relief

4. Petitioner filed his petition for penalty relief to terminate probation on September 27, 2020. In his petition he included a narrative statement, his curriculum vitae, and letters of support from Michael Sucher M.D. and Dr. Strodtbeck, certificates of completion of courses he was required to take under his probation, continuing medical credits he has earned, and proof that he has completed continuing medical education courses and the professional boundaries course. He also submitted letters of support which have been received as evidence.²

5. In support of his petition, Petitioner testified, and his testimony is consistent with the narrative he submitted. It is summarized as follows:

6. Since 2014 Petitioner has been the owner and medical director of DeSanto Clinics for Recovery, and he is also medical director of eleven treatment and recovery facilities in Orange County. Petitioner is board certified in internal medicine and was able to recertify despite being on Board probation. He was also board certified in addiction medicine, but that certification was revoked once he was placed

² The sequence of the letters written on Petitioner's behalf have been changed to Exhibits 1(P) to 4(P) from Exhibit A (B1 to B4) to better identify them.

on probation.

7. Petitioner's abuse of opioids grew over a 14-year period when, after he became addicted to pain medications, he used the drugs to treat a sports injury. At one point he was taking 5 to 10 oxycodone pills a day. He recognized he had a serious problem and sought help and took aggressive steps towards recovery. Through inpatient and outpatient treatment, his participation in Alcoholics Anonymous (AA), and the support he received from his community and doctors who have served as models to him, Petitioner said he was able to get clean and unscramble his brain. He identified April 10, 2012, as his sobriety date.³

8. Regarding his inpatient and outpatient treatment, Petitioner underwent a long detox period at Pacific Coast Recovery Center at Mission Hospital in Laguna Beach and completed a residential program for a total of 96 days of treatment.

9. For the last eight years Petitioner has attended AA meetings three to four times a week, is active in the 12-step community, and hosts an AA meeting for international doctors. Petitioner has a sponsor and has been a sponsor to four other doctors over the years. He said AA is an amazing way to understand yourself - both your strengths and weaknesses - and reconstruct the good things, and have hope and faith. Petitioner tries to be a beacon for other doctors who want to get sober.

10. Since 2012, Petitioner has had serious life stressors that could have been triggers for him to abuse drugs. He was able to avoid these triggers by increasing the AA meetings he attended, and getting closer with the higher power. He also identified regular exercise and yoga with helping him cope with life's stressors. Petitioner credits AA with saving his life.

³ This date is inconsistent with the dates he diverted opioids according to the first amended accusation. No explanation of this discrepancy was offered at hearing.

11. Petitioner has developed a passion for working in the field of addiction medicine and wants to be able to be recertified in addiction medicine once his probation ends. He wants probation to end so that he can be on insurance panels. Since 2014, Petitioner has treated, he estimates, thousands of persons in recovery both through the treatment centers and in his private practice. He said he can help persons in recovery because he speaks their language to make a connection and give them hope.

12. Regarding his failure to comply with probation as mentioned above, Petitioner attributed his failure in part because he was not able to take medicine to address his Attention Deficit Hyperactivity Disorder. He also attributed the failure to submit quarterly reports in a timely manner to the problem of getting information from others to complete the quarterly report package he submitted. But Petitioner stressed he takes responsibility for his failure to comply with the conditions.

Witnesses on Petitioner's Behalf

13. Petitioner called two witnesses on his behalf: Edward Hutchison, M.D., and Dr. Pate. Their testimony is summarized as follows:

14. Dr. Hutchinson knows Petitioner through AA. Dr. Hutchison has been sober for 19 years and practices internal medicine. He is aware of Petitioner's Board discipline. Dr. Hutchison said he has been active in AA for 18 years and is active in the fellowship to help persons in recovery learn how to reconnect with society and get through tough spots.

Over the eight years he has known Petitioner, Dr. Hutchison has seen Petitioner work on his sobriety weekly. Over this time, Petitioner has consistently attended AA meetings. As Dr. Hutchison put it, Petitioner has truly "participated" in the program and has not had an "attendance card approach."

Dr. Hutchison said that Petitioner practices the principle of "rigorous honesty," and he been candid and upfront about his behavior. Dr. Hutchison stressed the importance of this principle in a person's recovery.

Dr. Hutchison said he believes that Petitioner can practice medicine safely and he would not hesitate to send a member of his family to him for medical care. He noted that Petitioner has handled life's struggles extremely well, and he has never heard him to be hostile or argumentative.

15. Dr. Pate is a licensed clinical psychologist and also teaches at California Baptist University. He has been Petitioner's treating psychologist since 2015. He meets with Petitioner quarterly now but was previously seeing him weekly. He knows about Petitioner's discipline.

Dr. Pate said Petitioner has always been compliant. He described Petitioner as open and forthcoming about his life. He said he can trust what Petitioner says, and Petitioner always says there is something to work on. Petitioner has remained focused on maintaining his gains and making better decisions and developing better coping strategies. Dr. Pate said that Petitioner has used coping strategies successfully.

Dr. Pate is not concerned about Petitioner maintaining his sobriety or his ability to safely treat patients. He commented that Petitioner has coped well with stressful situations, and he is confident he will continue to do so.

Letters Written on Petitioner's Behalf

16. These persons wrote letters on Petitioner's behalf: Michel A. Sucher, M.D., Dr. Strodbeck, Atul Grover, M.D., Daniel Kulick, M.D., Dr. Hutchison, and Paul T. Ikuta, M.D.

17. Dr. Sucher wrote in his letter dated August 15, 2020, that he met Petitioner when Petitioner entered Pacific Coast Recovery Center where Dr. Sucher served as staff physician and consultant. He evaluated Petitioner and recommended a course of treatment for him which Petitioner followed. Dr. Sucher also monitored Petitioner for 90 days before the Board began monitoring him. Petitioner further attended AA meetings at Dr. Sucher's home for two years before Dr. Sucher moved. Dr. Sucher stated that he is confident in the stability and quality of Petitioner's recovery and supports Petitioner for early termination of probation.

18. Dr. Strodbeck in his letter dated August 11, 2020, wrote that he met Petitioner in 2012 when Petitioner started on his road to recovery. Dr. Strodbeck stated that Petitioner has fully embraced a life of recovery and Petitioner wants to live a long life of recovery. Petitioner, he stressed, has been an active and engaged participant in AA. Dr. Strodbeck sees no reason, in his opinion, why Petitioner should remain on Board probation.

19. Dr. Grover in a letter dated November 4, 2021, stated that he has known Petitioner for five years. He has observed Petitioner consistently recover from the disease of addiction with daily hard work and through his active participation in AA with a sponsor in his recovery. Dr. Grover noted that Petitioner has helped other professionals in recovery, has been a sponsor to others, and provides a venue for them to meet.

20. Dr. Kulick in his letter dated November 1, 2021, stated that he has known Petitioner since 2019 and Petitioner is extremely connected and engaged in his recovery program, and a valuable and essential member of the recovery community. He noted that Petitioner has been a valuable mentor to young physicians early in their recovery, and Petitioner is always available to them.

21. Dr. Ikuta stated in his letter dated November 2, 2021, that he has known Petitioner since 2012. Dr. Ikuta is a member of the International Doctors in AA and he knows Petitioner through this organization. He said that Petitioner has been an active and engaged participant in AA, and Petitioner's insight and spirituality have grown over the years. He endorses Petitioner's request to terminate probation.

22. Dr. Hutchison's statement in his letter dated November 2, 2021, was consistent with this testimony.

The Attorney General's Position

23. The Attorney General asked that Petitioner's application be denied because he only has a limited time left on probation and Board probation has helped ensure that he remains rehabilitated in order to protect the public.

LEGAL CONCLUSIONS

Burden of Proof

1. Petitioner has the burden to prove that he has rehabilitated himself and is entitled to have his license fully restored. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

Applicable Statutes

2. Business and Professions Code section 2221, subdivision (b) states:

The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.

3. Business and Professions Code section 2307 states, in part:

(a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the

decision ordering that disciplinary action:

[¶] . . . [¶]

(2) At least two years for early termination of probation of three years or more.

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the Petitioner since the disciplinary penalty was imposed.

(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the Petitioner since the disciplinary action was taken, the offense for which the Petitioner was disciplined, the Petitioner's activities during the time the certificate was in good standing, and the Petitioner's rehabilitative efforts, general reputation for the truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

Case Law Regarding Rehabilitation

4. Courts have provided guidance to assess the status of a person's rehabilitation. As one court put it, rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Another court noted that the amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a Petitioner can demonstrate by sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of a Petitioner's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

Evaluation and Disposition

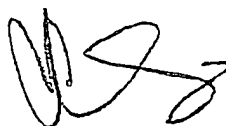
5. While the Board commends Petitioner for his rehabilitation efforts, the Board has determined that Petitioner's instances of non-compliance with the terms of his probation following his serious acts of misconduct warrant denial of his petition for early termination of his probation. As indicated above, Petitioner diverted opioid medications for his own use, a grave violation of the public trust. The Board placed him on seven years' probation with terms and conditions that he was expected to follow, yet, Petitioner did not fully comply with the terms of his probation. Petitioner's probation violations do not support granting his petition for early termination. In light of Petitioner's substance use history, acts of dishonesty, and non-compliance with the terms and conditions of probation, public protection requires Petitioner to serve his full period of probation.

ORDER

The petition filed by Joseph Anthony DeSanto, M.D., to terminate probation is denied.

The Decision shall become effective at 5:00 p.m. on **August 18, 2022**.

IT IS SO ORDERED this **19th** day of **July, 2022**.

A handwritten signature in black ink, appearing to read 'LR Lubiano', is written above a horizontal line.

Laurie Rose Lubiano, J.D.
Chair, Panel A
Medical Board of California